

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

BRAHEEM POTEAT,)	
)	
Petitioner,)	
)	
v.)	Civ.Act.No. 07-639-GMS
)	
PERRY PHELPS , Warden)	
and JOSEPH R. BIDEN, III , Attorney)	
General for the State of Delaware)	
)	
Respondents.)	

MOTION FOR EXTENSION OF TIME

Pursuant to Rule 6 of the Federal Rules of Civil Procedure, respondents move for an extension of time in which to file an answer to the petition. In support thereof, respondents state the following:

1. The petitioner, Braheem Poteat, has applied for federal habeas relief, alleging error by the state courts. D.I. 1. By the terms of the Court's order, the answer is due to be filed on July 7, 2008. D.I. 10.
2. Counsel has completed the response to Mr. Poteat's petition. However, before the response can be filed, it must be reviewed by the Chief of the Appeals Section, consistent with Department of Justice policy. That individual, unfortunately, is out of the office for much of this week. Counsel now anticipates that review of the response should be completed on or before July 14, 2008.
3. Under Habeas Rule 4, the Court has the discretion to give respondents an extension of time exceeding the 40-day limit in Civil Rule 81(a)(2). *Clutchette v. Rushen*, 770 F.2d 1469, 1473-74 & n.4 (9th Cir. 1985); *Kramer v. Jenkins*, 108 F.R.D. 429, 431-32

(N.D. Ill. 1985). The comment to Rule 4 expressly states that the district court has "the discretion to take into account various factors such as the respondent's workload" in determining the period of time that should be allowed to answer the petition.

4. This is respondents' first request for an extension of time in this case.

5. Respondents submit that an extension of time to and including July 14, 2008, in which to file an answer is reasonable. Respondents submit herewith a proposed order.

/s/Kevin M. Carroll
Deputy Attorney General
Department of Justice
820 N. French Street
Wilmington, DE 19801
(302) 577-8500
Del. Bar. ID No. 4836
Kevin.Carroll@state.de.us

DATE: July 7, 2008

RULE 7.1.1 CERTIFICATION

I hereby certify that I have neither sought nor obtained the consent of the petitioner, who is incarcerated and appearing *pro se*, to the subject matter of this motion.

/s/ Kevin M. Carroll
Deputy Attorney General

Counsel for Respondents

Date: July 7, 2008

CERTIFICATE OF SERVICE

I hereby certify that on July 7, 2008, I electronically filed the attached documents with the Clerk of Court using CM/ECF. I also hereby certify that on July 7, 2008, I have mailed by United States Postal Service, the same documents to the following non-registered participant:

Braheem Poteat
No. 376102
Delaware Correctional Center
1181 Paddock Road
Smyrna, DE 19977

/s/Kevin M. Carroll
Deputy Attorney General
Department of Justice
820 N. French Street
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BRAHEEM POTEAT,

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V.

Civ.Act.No. 07-639-GMS

PERRY PHELPS, Warden
and **JOSEPH R. BIDEN, III**, Attorney
General for the State of Delaware

Respondents.

ORDER

This ____ day of _____, 2008,

WHEREAS, respondents having requested an extension of time in which to file an answer, and

WHEREAS, it appearing to the Court that the requested extension is timely made
and good cause has been shown for the extension,

IT IS HEREBY ORDERED that respondents' answer shall be filed on or before July 14, 2008.

United States District Judge